

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2014040975

ORDER FOLLOWING PREHEARING
CONFERENCE

On June 6, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Lindsay Vose, Attorney at Law, appeared on behalf of Student. Carlos M. Gonzalez, Attorney at Law, appeared on behalf of Inglewood Unified School District (District). Courtney M. Brady, Attorney at Law, appeared on behalf of Los Angeles County Office of Education (LACOE). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on June 16-19, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., with the exception of June 17, 2014, on which day the hearing shall begin at 12:00 p.m. (noon) unless otherwise ordered.

The hearing shall take place at the former location of the District's Warren Lane Elementary School located at 9330 South 8th Avenue, Inglewood, California 90305. Witnesses should be informed by counsel, for purposes of attending the hearing, that the sign outside of the building in which the hearing will take place reads "Warren Lane Elementary School." However, witnesses should also be cautioned that only the street address should be used with Internet and GPS direction services, as the service might otherwise erroneously direct users to the new Warren Lane Elementary School located at a different address.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

1. Did District or LACOE deny Student a free appropriate public education (FAPE) during the 2012-2013 and 2013-2014 school years by:

a. Failing to assess Student in all areas of suspected disability, in particular by failing to appropriately conduct the following assessments:

- (i) psychoeducational
- (ii) speech and language
- (iii) behavior
- (iv) occupational therapy
- (v) adapted physical education
- (vi) social skills.

b. Failing to comply with the procedural requirements of developing an IEP by:

- (i) failing to accurately document Student's present levels of performance,
- (ii) failing to include measurable annual goals in Student's individualized education programs (IEP's),
- (iii) predetermining Student's placement,
- (iv) failing to provide prior written notice to Parents of District's refusal to include Student in music, dance or cheerleading classes.

c. Failing to offer Student:

- (i) research based behavior support,
- (ii) a one-on-one aide,
- (iii) adequate speech and language services,
- (iv) adequate occupational therapy services,
- (v) extended school year programs.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). LACOE shall designate its exhibits L-1, L-2, or use a similar alphabetic designation, to distinguish its exhibits from those of Student or District. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses.

The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's PHC statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by 12:00 p.m. (noon) on June 11, 2014, as to the schedule of witnesses. The parties shall coordinate the availability and order of testimony of witnesses, to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The witness schedule will be finalized at the commencement of the due process hearing.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

Student has identified 23 witnesses to be called at the hearing, District has identified 12 witnesses, and LACOE has identified 4 witnesses. Some of the witnesses are listed by other parties. In light of the fact that four days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. Therefore, by 5:00 p.m. on June 10, 2014, each party shall serve on the other party and on OAH a tentative witness list, including a time estimate of the length of each witness's direct examination testimony, and notations as to the witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual

witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

6. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence, followed by District's evidence, followed by LACOE's evidence. However, witnesses to be called by multiple parties will be fully questioned on all issues whenever first called to the stand.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the PHC of June 9, 2014.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing Closed To the Public. The hearing will be closed to the public.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 9, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings